IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 132 OF 2002

1. State of Goa,
   through the Dy.Collector &
   SDO, Ponda Sub-Division,
   Ponda-Goa.

2. The Executive Engineer,
   Works Division XV(NH)
   P.W.D. Ponda, Goa.

... Appellants
(Original Respondents)

versus

The President of Our Lady of
Piety Church, Mardol,
P.O. Mardol, Goa.

... Respondent
(Original Applicant)

Mr. A. N. S. Nadkarni, Advocate General with Mr. H. D. Naik, Additional Government Advocate for the Appellants.

Mr. F. J. Colaco, Advocate for the Respondent.

CORAM : B. H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE OF RESERVING
THE JUDGMENT: 26-10-2004.

DATE OF PRONOUNCING
THE JUDGMENT: 3-11-2004.

ORAL JUDGMENT (PER N. A. BRITTO, J.)

This appeal is filed by the State against Judgment/Award dated 26-11-2001 of the learned Additional District Judge, Panaji, in L.A.C. No.11 of 1999.

2. Some facts are required to be stated to dispose of the present appeal.

3. By virtue of Notification issued under Section 4(1) of the Land Acquisition Act, 1894(Act, for short) published on Gazette dated 18-10-91, the Government acquired about 94,226 sq. metres of land at Mardol in Priol Village for the realignment of NH 4A(Mardol by-pass). In the said acquisition land admeasuring 11,505 sq. metres from survey no.50/1, 5000 sq. metres from survey no. 56 and 5425 sq. metres from survey no.53/1 belonging to the Respondent (Applicant, for short) was also included. The Land Acquisition Officer awarded to the said Applicant compensation at the rate of Rs.25/- (for bharad/cashew) and Rs.30/- (arecanut/coconut land) per sq. metre, by Award dated 20.12.1984.

4. Dissatisfied with the amount of compensation awarded by the L.A.O. by the said Award, the said Applicant got a reference made under Section 18 of the said Act and in the said reference the Applicant examined its President and produced Sale Deeds dated

9-9-1982 – Exh.AW1/C, 27-8-1986 – Exh.AW1/D, 10-10-1991– Exh.AW1/E, 12-8-1991 – Exh.AW1/F and 12-8-1991 – Exh.AW1/G and in support of this last Sale Deed the Applicant examined A.W.3, Bindu Mardolkar. The Applicant also examined an expert, namely, Ramesh Verenkar, Civil Engineer, who had submitted his report dated 20-4-2000 after inspecting the acquired property on 17-4-2000.

5. The learned Additional District Judge used the Sale Deed dated 12-8-1991-Exh.AW1/G as a guide for the purpose of enhancing the compensation payable to the Applicant and after taking a deduction of 30% of the sale price of Rs.163/- per sq. metre fixed the compensation at Rs.114/- per sq. metre.

6. Mr. A. N. S. Nadkarni, learned Advocate General appearing on behalf of the State, has submitted that the Applicant had produced no evidence to show that the plot of the Sale Deed – Exh.AW1/G dated 12-8-1991 was similar to the acquired land and as it was not comparable the same could not have been used as a guide for the purpose of enhancing the compensation. In support of his submission, Mr. Nadkarni placed reliance on the case of **Shaji Kuriakose and another** v. **Indian Oil Corporation Ltd. and others** ((2001) 7 SCC 650 and **Panna Lal Ghosh and others** v. **Land Acquisition Collector and others** ((2004) 1 SCC 467. Mr. Nadkarni further submitted, relying upon the case of **Shri Sadguru R. Kolmule** v. **Dy. Collector of North Goa Division**(1996(1) G.L.T.

8) that the report of Mr. Verenkar, Civil Engineer, could not be accepted as it was prepared subsequent to the date of Notification under Section 4 of the Act.

7. On the other hand, Mr. F. J. Colaco, learned Counsel of the Applicant/Respondent submitted that the evidenc of A.W.1, Fr. Caitan Cardozo, when read as a whole showed that the acquired land was suitable for construction and, therefore, was comparable with the sale instance Exh.AW1/G, dated 12-8-1991. Mr. Colaco, then submitted that certain amount of guess work is permissible while fixing the market value of the land.

8. In the case of **Saji Kuriakose and another** v. **Indian Oil Corporation Ltd. and others**(supra) the Supreme Court has stated that Courts adopt comparable sales method of valuation while fixing the market value of the acquired land and while fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchasr would pay for the acquired land if it had been sold in the open market at the time of issue of Notification under Section 4 of the Act. The Supreme Court stated that there are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded according to the value of the land reflected in the sales and the said factors inter alia are:-

(i) the sale must be a genuine transaction, (ii) that the sale deed must have been executed at the time proximate to the date of issue of Notification under Section 4 of the Act, (iii) that the land covered by the sale must be in the vicinity of the acquired land, (iv) that the land covered by the sales must be similar to the acquired land and (v) that the size of plot of the land covered by the sales be comparable to the land acquired and if all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land.

9. In the case of **Panna Lal Ghosh and others v. Land Acquisition Collector and others** (supra) the Supreme Court observed that the most reliable way to determine the market value is to rely on the instances of sale of portions of the same land as has been acquired or adjacent lands made shortly before or after the Section 4 Notification. On facts of the case, the Court found that the two lands were not proved to be comparable in nature and potentiality.

10. In the case of **Shri Sadguru R. Kolmule** v. **Dy. Collector of North Goa Division**(supra) this Court noted that the expertise of the witness in valuing the property were not spoken to either by the appellant or the expert himself and more over he had visited the property in 1987 and had made the valuation as on 9-9-82 and, therefore, in the absence of any explanation or clarification made by him as to how the valuation taken after five years from the date of Notification would be taken as a relevant factor for the purpose of deciding the market value of the land his valuation report could not be taken into account for the purpose of valuation of the property.

11. In our view, the enhancement of compensation on the basis of the Sale Deed Exh.AW1/G, dated 12-8-1991 per se could not be faulted.

12. The learned Additional District Judge apparently has not placed any reliance on the evidence of the expert and the latter did not at all take into consideration the price of the Sale Deed Exh.AW1/G, dated 12-8-1991.

13. Both, A.W.1, Fr. Caitan Cardozo, as well as A.W.3, Bindu Mardolkar have referred to the plot Exh.AW1/G, dated 12-8-1991 as a developed plot and the learned Additional District Judge has accepted

their evidence and considered it to be so. We accept the said position.

14. Admittedly, A.W.3, Mardolkar, had purchased the said plot admeasuring 553 sq. metres at the rate of Rs.163/- per sq. metre from one Rocky Dias, who had earlier purchased a larger plot from the Applicant by Sale Deed dated 9-11-1976 and after sub-dividing the said plot into two plots admeasuring 553 sq. metres and 558 sq. metres had sold the plot admeasuring 553 sq. metres to A.W.3, Mardolkar. This plot pertained to survey no.53/1 belonging to the said Applicant. There is also no dispute that all the 3 survey nos. from which the present land of the Applicant has been acquired are contiguous. The evidence on record clearly shows that the acquired land was fit for construction and as per the regional plan was located in the settlement zone although it had a mild slope. A part of adjoining land was earlier converted by the Applicant into about 100 plots and sold for construction of houses. In his evidence A.W.1, Fr. Cardozo, had clearly stated that the acquired land(survey no.50/1) was levelled land having a slight slope on the eastern side while the land of survey no.53/1 was levelled land with cultivation of coconut trees. He had also stated that the land of survey no.56 was also levelled land with slight slope on the eastern side. As regards the amenities available, A.W.1, Fr. Cardozo, had stated that the market at Mardol was at a distance of about 250 metres and the Post Office was at a distance of 250 metres while the Police Station was at a distance of 100 metres. He had also stated that the acquired land was

at a distance of 7 kms. from Ponda city and 23 kms. from Panaji city and was situated behind the Church of Mardol and the existing road was adjacent to the acquired land and there was access from the main road to go to the land. According to him, the distance from the National Highway which goes in front of the Church to the acquired land was 180 metres and that the plots sold in the year 1970-72 by the Church were from survey nos.49/1, 52/1 and 53/1. He had also stated that there was a compound on two sides of the property and that the prices of land had gone on increasing. A.W.3, Mardolkar, had stated, and which was not contested on behalf of the Respondent/Government that the plot purchased by him and the acquired land were fit for construction. In the light of the aforesaid evidence it could not be said that the plot of the Sale Deed Exh.AW1/G, dated 12-8-1991 was not comparable with the acquired land. However, the learned Additional District Judge has not at all considered some of the disadvantages which the acquired land had in relation to the plot of the Sale Deed. The plot of the Sale Deed was comparatively a small plot admeasuring 553 sq. metres while the acquired land was comparatively large namely, 21930 sq. metres. It is by now well settled that in fixing the market value of a large property on the basis of a sale transaction for a smaller property a reduction is generally to be given. As stated by the Supreme Court in the case of **Land Acquisition Officer** v. **Smt. L. Kamalamma**(1998 AIR SCW 497) when no sales of comparable land was available where large chunks of land had been sold even land transactions in respect of

smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains ... etc. Where a huge extent of land acquired was situated on a main road and in heart of a town, the land would have been said to possess potentiality as urban area, reliance on a sale transaction under which 100 sq. ft. of land situated very close to the acquired land was sold could not be said to be improper. In that case, the Court reduced the price by 40% also considering the time which would be required for formation of the lay out, the period for which the money would be locked up in the investment and the waiting period as also for the reduced price for land when lump sum payment is made.

15. Moreover, the plot of the Sale Deed- Exh.AW1/G dated 12-8-1991 was abutting a road while the acquired property though partly of the same survey no.53/1 was situated at a distance of about 180 meters from the said plot of AW1/G, dated 12-8-1991. The acquired land though contiguous had also a gradient. All these factors ought to have been taken into consideration by the learned Additional District Judge in reducing further the price of the acquired land in relation to the price paid to the plot Exh.AW1/G, dated 12-1-1991. In our view, the learned Additional District Judge ought to have taken at least a deduction of 50% considering the aforesaid disadvantage which the acquired land had in relation to the plot of Sale Deed Exh.AW1/G,

dated 12-8-1991. We, therefore, fix the compensation payable to the Applicant at the rate of Rs.81.50 per sq. metre.

16. There is yet another aspect which needs to be considered. As far as the land of survey no.53/1 is concerned, the survey records showed that one Malini R. Naik had a right of plucking the flowers (zaio) from Jasmine trees. The learned Land Acquisition Officer has referred the dispute regarding the payment of compensation regarding this survey number to the District Court under Section 30 of the Act and the said reference is pending. The learned Additional District Judge has directed half of the compensation to be paid to the Applicant and the remaining half to be kept pending till the disposal of the said reference.

17. Mr. Nadkarni, learned Advocate General has placed reliance on the case of **M.B.Gopala Krishna and others** v. **Special Deputy Collector, Land Acquisition** ((1996) 3 SCC 594) wherein the Apex Court has stated that a freehold land and one burdened with encumbrances do make a big difference in attracting willing buyers. A freehold land normally commands higher compensation while the land burdened with encumbrances secures lesser price. The fact of a tenant in occupation would be an encumbrance and no willing purchaser would willingly offer the same price as would be offered for a freehold land. Under those circumstances, the High Court would be right in its conclusion that the land burdened with

encumbrances takes lesser price than the freehold land. The encumbrances would operate as a disabling factor to peg down the price when we compare the same with freehold land.

18. In our view, the approach of the learned District Judge as regards the Order of payment of compensation in respect of survey no.53/1 does not appear to be correct. In case the said Malini R. Naik succeeds in her claim of tenancy, which we are told is now pending before the Mamlatdar for his decision, then in that event, the Applicant would only be entitled to receive the purchase price of the said land and nothing more. In case, the said Malini R. Naik succeeds then the land of survey no.53/1 in her hands would not be assessable as land having any building potential in the light of very many legal restrictions in force in this State.

19. In the circumstances, therefore, we order that the payment on account of enhancement of compensation regarding survey no.53/1 be kept in abeyance to be paid to the Applicant depending upon the orders which may be passed by the learned Reference Court in the said dispute pending under Section 30 of the Act between the Applicant and the said Malini R. Naik. The Applicant would be entitled for enhanced compensation only in case the said Malini R. Naik fails in her claim for tenancy.

20. As a result of the above discussion, we allow the appeal

partly and modify the impugned Judgment/Award of the learned Additional District Judge to the extent indicated hereinabove. In other words, the Applicant shall be paid enhanced compensation at the rate of Rs.81.50 per sq. metre with all consequential statutory benefits. We leave the parties to bear their own costs.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

RD.